

PLANNED DEVELOPMENT PERMIT

FILE NO.	PD08-069
LOCATION OF PROPERTY	North side of Berryessa Road, approximately 1,100 feet easterly of Commercial Street.
ZONING DISTRICT	A(PD) Planned Development (PDC09-006)
GENERAL PLAN DESIGNATION	Urban Village
PROPOSED USE	Planned Development Permit to construct a 118,580 square foot commercial shopping center on a 9.6 acre portion of a 58.0 gross- acre site in the A(PD) Planned Development Zoning District.
ENVIRONMENTAL STATUS	Re-use of San Jose Flea Market EIR, Resolution No. 73956
OWNER/ADDRESS	The Flea Market, Inc. 1590 Berryessa Road San Jose, CA 95131

FACTS

The Director of Planning, Building and Code Enforcement finds that the following are the relevant facts regarding this proposed project:

1. The subject site has a land use designation of Urban Village on the Envision San José 2040 General Plan Land Use/Transportation Diagram.
2. The currently vacant 9.6 acre site is zoned A(PD) Planned Development Zoning District and is part of the Flea Market Planned Development Rezoning (Ordinance No. 28657) adopted on November 3, 2009, which allows up to 2,818 residential units and 365,622 square feet of commercial/industrial/office uses on a 120.3 gross acre site.
3. On June 2, 2006 a Master Planned Development Permit (File No. PD08-025) was approved for the design and construction and phasing for public improvements to support future development of up to 2,818 residential units and up to 365,622 square feet of commercial and office space on the 120.3 gross acre site.
4. This Planned Development Permit will allow construction of a 118,580 square foot commercial shopping center on a 9.6 acre portion of the Flea Market site, located on the north side of Berryessa Road, 1,100 feet easterly of Commercial Street.
5. Based on the neighborhood shopping center parking requirement of 1 space per 225 net square feet of floor area, the shopping center with 100,793 net square feet of building area is required to provide 447 off-street parking spaces. The site includes 464 parking spaces.

6. The subject site is entirely within the Flea Market Urban Village area and is bordered on the north by single-family residences and future parkland, on the south by Berryessa Road, on the east by the future extension of Sierra Road, and on the west by Coyote Creek. Across Berryessa Road to the south is the existing San Jose Flea Market, and across the future extension of Sierra Road to the east is existing surface parking for the Flea Market. To the west across Coyote Creek is an existing aggregate processing facility.
7. The environmental impacts of the Flea Market project were addressed by a Final EIR entitled, "San Jose Flea Market General Plan Amendment & Planned Development Rezoning," adopted by City Council Resolution No. 73956 on August 14, 2007, and subsequent EIR Addendum prepared on September 16, 2009. Pursuant to Section 21081.6 of the California Environmental Quality Act (CEQA) a Mitigation Monitoring and Reporting Program (MMRP) was adopted that includes measures to mitigate or avoid significant effects on the environment.

FINDINGS

The Director of Planning, Building, and Code Enforcement concludes and finds, based on the analysis of the above facts with respect to the Planned Development Permit findings (Section 20.100.940), that:

1. The Planned Development Permit, as issued, furthers the policies of the General Plan, in that:
The project is consistent with the site's General Plan Land Use/Transportation Diagram designation of Urban Village, which supports a wide variety of commercial, residential, institutional, and other uses. The subject site is a commercial/retail component of the larger Flea Market Urban Village, which allows up to 2,818 residential units and 365,622 square feet of commercial/industrial/office uses.
2. The Planned Development Permit, as issued, conforms in all respects to the Planned Development Zoning of the property in that:
The proposed project conforms to the approved General Development Plan.
3. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious, in that:
The project conforms to the Commercial Design Guidelines.
The site layout and architectural elements of the proposed buildings are integrated into a harmonious whole.
The proposed project is compatible in terms of architecture and scale with the anticipated development in the balance of the Flea Market Urban Village and proximate to the site.
4. The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties, in that:

Under the provisions of Section 15162 of the State Guidelines for implementation of the California Environmental Quality Act (CEQA), the City of San José has determined that the project is pursuant to or in furtherance of the San Jose Flea Market General Plan Amendment & Planned Development Rezoning Environmental Impact Report (EIR) and subsequent Addendum, and does not involve new significant effects beyond those analyzed in this Final EIR.

Finally, the Director of Planning, Building, and Code Enforcement concludes and finds, based on the analysis of the above facts, that the proposed project conforms in all respects to the provisions of Title 20 of the San José Municipal Code.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and
 - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Planned Development Permit shall automatically expire four years from and after the date of issuance hereof by said Director, if within such time period, the use has not commenced, pursuant to and in accordance with the provision of this Planned Development Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
4. **Conformance to Plans.** Development of the site shall conform to the approved Planned Development plans entitled, "Planned Development Permit for Commercial / San Jose Flea Market – North Village Commercial – Phase 1 - Commercial" last revised August 2, 2013, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04), with the exception of any subsequently approved changes.

5. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
6. **Conformance with Previously Approved Zoning.** All conditions of approval and required environmental mitigation measures from the previously approved Planned Development Zoning remain in effect.
7. **Conformance with Previously Approved Permit.** All of the conditions of the previously approved Master Planned Development Permit (File No. PD08-025), including applicable mitigation measures, for the Flea Market shall remain unchanged and in full force and effect unless such conditions are specifically modified or deleted by this Permit.
8. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
9. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Planned Development Permit incorporated by reference in this Permit in accordance with Chapter 20.100 of the San Jose Municipal Code.
10. **Landscaping.** Planting and irrigation are to be provided, as indicated on the final Approved Plan Set. Landscaped areas shall be maintained and watered. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Standards.
11. **Irrigation Standards.** The applicant shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San Jose Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect prior to Certificate of Occupancy.
12. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
13. **Construction/Demolition Impact Mitigation Measures.** The applicant is responsible for notifying all contractors of the conditions of this permit and that they shall perform construction/demolition activities in compliance with these conditions, or be subject to enforcement action.
 - a. *Compliance.* The applicant shall ensure that the following construction impact mitigation measures are fully complied with throughout the duration of all construction activities associated with this project and related off-site construction work. Failure to comply with these conditions by the applicant, their contractors or subcontractors shall be cause for shutdown of the project site until compliance with the following conditions can be ensured by the City. These construction impact mitigation measures shall be included in all contract documents for the project to ensure full disclosure to contractors and subcontractors.
 - b. *Construction Hours.* Construction and grading activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday. This includes the staging of equipment and construction personnel.

- c. *Plans.* The construction hours shall be printed on all plans for the project used to construct the project.
- d. *Enforcement.* The Director of Planning, Building and Code Enforcement may order an immediate halt to construction activities on the project site any time that the Director determines that the project is not in substantial conformance with the requirements of this Permit. Within seven days of ordering such a halt to construction, the Director of Planning, Building and Code Enforcement shall issue a Notice of Noncompliance in conformance with Section 20.100.320 of Title 20 of the San José Municipal Code indicating the specific area(s) of noncompliance and providing notice that the Director may issue an Order to Show Cause why the development permit shall not be revoked, suspended, or modified if the noncompliance is not corrected.
- e. *Construction Deliveries.* Deliveries shall not occur outside the above construction hours. All deliveries shall be coordinated to ensure that no delivery vehicles arrive prior to the opening of the gates to prevent the disruption of nearby residents.
- f. *Fencing.* The site shall be wholly enclosed by security fencing where the site is accessible by vehicles. The gates to the project site shall remain locked during all other times, except for a 30-minute period immediately preceding and following the above hours of construction.
- g. *Assembly Area.* Workers shall not arrive to the site until the opening of the project gates. The applicant shall designate a location without adjacent residential units for workers to wait prior to the opening of the project gates.
- h. *Disturbance Coordinator.* A Construction/Disturbance Coordinator shall be identified by the developer for this project. The Construction/Disturbance Coordinator shall be responsible for ensuring compliance with the hours of construction, site housekeeping, and other nuisance compliance conditions in this permit. The coordinator shall also compile information regarding construction phasing/operations and keep the neighborhood informed of the stages of development. The coordinator shall also listen and respond to neighborhood concerns regarding construction, determine the cause of the concern (e.g., starting too early, bad muffler, etc.) and institute reasonable measures warranted to correct the problem in a timely manner. The coordinator shall maintain a log of calls and shall make that log available to the City of San Jose upon request.
- i. *Construction Equipment.* Equip all internal combustion engine-driven equipment with mufflers which are in good condition and appropriate for the equipment.
 - i. Utilize "quiet" models of air compressors and other stationary noise sources where technology exists.
 - ii. Locate stationary noise-generating equipment as far as possible from sensitive receptors. Staging of construction equipment will be as far as feasible from the sensitive receptors.
 - iii. Prohibit unnecessary idling of internal combustion engines.

- j. *Posting of Telephone Number.* The name and phone number of the construction/Disturbance coordinator, the hours of construction limitations, City File Number PD08-069, and City contact and phone number (408) 535-7770, shall be displayed on a weatherproof sign posted at each entrance to the project site. A local phone number with answering service shall be maintained during the duration of project construction.
- k. *Street Cleaning and Dust Control.* During construction, the developer shall damp-sweep the public and private streets within and adjoining the project site each working day sufficient to remove all visible debris and soil. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
- l. *Construction Watering.* The proposed project shall use recycled water for all grading, dust control, and other non-potable approved uses during construction to the satisfaction of the Director of Public Works.
- m. *Recycling.* Scrap construction and demolition material should be recycled. Integrated Waste Management staff at (408) 535-8550 can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.
- n. Water all active construction areas at least twice daily and more often during windy periods to prevent visible dust from leaving the site; active areas adjacent to windy periods; active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers or dust palliatives.
- o. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard.
- p. Pave, or apply water at least three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
- q. Sweep daily (or more often if necessary) to prevent visible dust from leaving the site (preferably with water sweepers) all paved access roads, parking areas, and staging areas at construction sites; water sweepers shall vacuum up excess water to avoid runoff-related impacts to water quality.
- r. Sweep streets daily, or more often if necessary (preferably with water sweepers) if visible soil material is carried onto adjacent public streets.
- s. Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more).
- t. Enclose, cover, water at least twice daily, or apply not-toxic soil binders to exposed stockpiles (dirt, sand, etc.) to prevent visible dust from leaving the site.
- u. Limit traffic speed on unpaved roads to 15 mph.
- v. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- w. Replant vegetation in disturbed areas as quickly as possible.

- x. Install wheel washers for all existing trucks, or wash off the tires or tracks of all trucks and equipment leaving the site.
- y. Install wind breaks, or plant trees/ vegetative wind breaks at windward side(s) of construction areas.
- z. Suspend excavation and grading activities when winds instantaneous gusts exceed 25 mph.
- aa. Limit the area subject to excavation grading, and other construction activity at any one time.

14. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits.

- a. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
- b. **Transportation:**
 - i. This project is subject to the City's US-101/Oakland/Mabury Transportation Development Policy.
 - ii. Construct offsetting improvements equivalent to \$3816/peak hour trip for commercial land use impacts to the protected intersections. The \$3816 amount is the current 2012 fee and is subject to a 3.5 percent cost escalation adjustment and will take effect annually on July 1st of each year.
- c. **Grading/Geology:**
 - i. A grading permit is required prior to the issuance of a Public Works Clearance.
 - ii. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
 - iii. Because this project involves a land disturbance of one or more acres, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
 - iv. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.

- d. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.
- e. **Flood: Portions in Zone AH, Elevation 82.00' North American Vertical Datum 1988 (NAVD88) & Zone D**
- i. This project is proposing to apply for a Letter of Map Revision Based on Fill (LOMR-F) to FEMA for removal from the 100-year floodplain. The approved LOMR-F is required prior to issuance of an occupancy permit.
- 1) The Conditional Letter of Map Revision Based on Fill (CLOMR-F), that provides comment on the proposed project by FEMA, is required prior to issuance of a building permit.
- ii. If a CLOMR-F is not issued by FEMA, the following conditions apply:
- 1) For the commercial and mixed-use buildings:
- a) Elevate the lowest floor, including basement, above 82.00' NAVD88 or floodproof to the same elevation. For insurance rating purposes, the building's floodproofed design elevation must be at least one foot above the base flood elevation to receive rating credit.
- b) An Elevation Certificate (FEMA Form 81-31) for each proposed structure, based on construction drawings, is required prior to issuance of a building permit. Consequently, an Elevation Certificate for each built structure, based on finished construction is required prior to issuance of an occupancy permit.
- c) If the structure is to be floodproofed, a Floodproofing Certificate (FEMA Form 81-65) for each structure, floodproofing details, and if applicable, a Flood Emergency Operation Plan and an Inspection & Maintenance Plan are required prior to the issuance of a Public Works Clearance.
- d) Building support utility systems such as HVAC, electrical, plumbing, air conditioning equipment, including ductwork, and other service facilities must be elevated above the base flood elevation or protected from flood damage.
- f. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
- g. **Undergrounding:**
- i. The In Lieu Undergrounding Fee shall be paid to the City for all frontage adjacent to Berryessa Road prior to issuance of a Public Works Clearance. 100 percent of the base fee in place at the time of payment will be due. Currently, the 2013 base fee is \$418 per linear foot of frontage and is subject to change every January 31st based on the Engineering News Record's City Average Cost Index for the previous year. The project will be required to pay the current rate in effect at the time the Public Works Clearance is issued.

- ii. The Director of Public Works may, at his discretion, allow the developer to perform the actual undergrounding of all off-site utility facilities fronting the project adjacent to Berryessa Road. Developer shall submit copies of executed utility agreements to Public Works prior to the issuance of a Public Works Clearance.

h. **Street Improvements:**

- i. Remove and replace broken or uplifted curb, gutter, and sidewalk along project frontage.
- ii. Proposed driveway width to be 26'.
- i. **Sanitary:** The existing sanitary sewer system in Sierra Road has capacity to serve Phase I of the project, which consists 242 residential units and the proposed commercial development at North Village.
- j. **Electrical:** Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
- k. **Street Trees:** Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in cut-outs at the back of curb. Obtain a DOT street tree planting permit for any proposed street tree plantings. Contact the City Arborist at (408) 794-1901 for the designated street tree.

15. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:

- a. *Construction Plans.* This permit file number, **PD08-069**, shall be printed on all construction plans submitted to the Building Division.
- b. *Americans with Disabilities Act.* The applicant shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
- c. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
- d. *Street Number Visibility.* Street numbers of the buildings shall be easily visible at all times, day and night.
- e. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.

16. **Fire Department Clearance.** A Fire Clearance shall be obtained from the Fire Chief prior to the issuance of a building permit. The owner shall provide fire flow and fire hydrant locations information at building permit stage.

17. **Colors and Materials.** All building colors and materials shall be as shown on the approved plans entitled "Colored Exterior Elevations" dated July 10, 2013. Changes to the approved colors and materials shall require review by the Director of Planning, Building, and Code Enforcement.
18. **Lighting.** Light fixtures shall be as shown on the approved plans. On-site, exterior, unroofed lighting shall conform to the Outdoor Lighting Policy. Lighting shall be designed, controlled and maintained so that no light source is visible from outside of the property.
19. **Mechanical Equipment.** The location of mechanical equipment (AC Units) shall be located as shown on the approved plans and shall be screened from view.
20. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning and can be processed together with the items listed Permit Adjustment Required condition below. Signs shown on plans are for conceptual reference only.
21. **Motorcycle Parking.** This project shall conform to the motorcycle parking requirements identified on the Zoning Ordinance. The required spaces shall be provided through a combination of dedicated spaces as shown on the plans and the use of surplus vehicular parking spaces (to be used as vehicle or motorcycle parking spaces)
22. **Bicycle Parking.** This project shall conform to the bicycle parking requirements identified in the Zoning Ordinance. Bicycle parking facilities shall be located in a convenient, highly visible and well lighted area and within view of pedestrian traffic.
23. **Green Building.** The project shall comply with the provisions of Ordinance No. 28622 in the San Jose Municipal Code or subsequent ordinance for private-sector green building that is in effect at the time that a building permit application is submitted to the Department of Planning, Building and Code Enforcement Building Division. New commercial projects over 25,000 square feet must receive the minimum green building certification of LEED Silver. A Green Building Deposit is required prior to issuance of building permit. The Green Building Deposit is refundable in accordance with the provisions of Ordinance No. 28622.
24. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.
25. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
26. **Anti Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage.
27. **Building and Property Maintenance.** The property owner or management company shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.

28. Revocation, Suspension, Modification. This Planned Development Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Planned Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

APPROVED and issued on this 6th day of November, 2013.

Joseph Horwedel, Director
Planning, Building and Code Enforcement

Deputy